

FCC MAIL SECTION

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CORRECTION

DA 98-1714

DISPATCHED BY  
**Before the  
 FEDERAL COMMUNICATIONS COMMISSION  
 Washington, D.C. 20554**

In the Matter of	)	
	)	
MCI Telecommunications Corporation	)	CC Docket No. 96-149
	)	
Petition for Declaratory Ruling Regarding the	)	
Joint Marketing Restriction in Section 271(e)(1)	)	
of the Communications Act of 1934, as amended	)	
by the Telecommunications Act of 1996	)	

**ORDER**

Adopted: August 27, 1998

Released: August 27, 1998

By the Chief, Policy and Program Planning Division:

1. On August 10, 1998, MCI Telecommunications Corporation (MCI) filed a motion to withdraw its petition for declaratory ruling, filed May 1, 1997, in the above-captioned proceeding. In its May 1997 petition, MCI requested a declaratory ruling on the application of the Commission's rules governing the joint marketing restriction in section 271(e)(1) of the Communications Act of 1934 (Act).<sup>1</sup> Section 271(e)(1) restricts a telecommunications carrier that serves greater than 5 percent of the nation's presubscribed access lines from jointly marketing its interLATA services with resold Bell Operating Company (BOC) local exchange service in an in-region state until February 8, 1999, or the date when a BOC is allowed to enter the long distance market in that state, whichever is earlier. On December 24, 1996, the Commission released the *Non-Accounting Safeguards Order*, which discussed, *inter alia*, the marketing practices that it interpreted section 271(e)(1)

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<sup>1</sup> 47 U.S.C. § 271(e)(1). The Commission released a public notice soliciting comments on MCI's petition on May 9, 1997. *Pleading Cycle Established for Comments on MCI Petition for Declaratory Ruling Regarding the Joint Marketing Restriction in Section 271(e)(1) of the Act*, CC Docket No. 96-149, Public Notice, 12 FCC Rcd 6098 (1997).

both to proscribe and to permit.<sup>2</sup>

2. In its motion to withdraw, MCI states that on March 12, 1997, Pacific Bell filed with the California Public Utilities Commission (CPUC) a complaint against MCI and AT&T, alleging that certain MCI and AT&T marketing materials violate Section 271(e)(1), as interpreted in the *Non-Accounting Safeguards Order*.<sup>3</sup> Ameritech also filed an informal complaint before this Commission relating to similar materials<sup>4</sup> and, subsequently, a formal complaint challenging an MCI advertisement marketing local and long distance service.<sup>5</sup>

3. In its motion to withdraw, MCI notes that actions that precipitated MCI's May 1997 petition either have been dismissed or have been rendered moot by marketplace developments, and asserts that further proceedings on the petition would, therefore, not be productive. MCI states that neither the Pacific Bell complaint before the CPUC that initially motivated MCI to file its May 1997 petition nor Ameritech's formal complaint before this Commission currently are pending,<sup>6</sup> and that MCI is no longer using the marketing materials attached to its May 1997 petition. MCI requests, therefore, that it be permitted to withdraw its petition for declaratory ruling, without prejudice to a future refiling in the event that subsequent developments raise similar issues again.

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<sup>2</sup> Implementation of the *Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), Order on Reconsideration, 12 FCC Rcd 2297 (1997), recon. pending, petition for summary review in part denied and motion for voluntary remand granted sub nom., *Bell Atlantic v. FCC*, No. 97-1067 (D.C. Cir. filed Mar. 31, 1997), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997), *aff'd sub nom. Bell Atlantic Telephone Cos. v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Second Report and Order, 12 FCC Rcd 15756 (1997).

<sup>3</sup> *Pacific Bell v. AT&T Communications of California, Inc. and MCI Telecommunications Corporation*, Case No. 97-03-016 (filed Nov. 12, 1997).

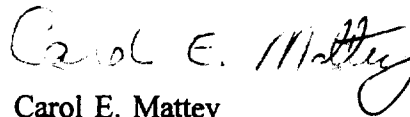
<sup>4</sup> See Notice of Informal Complaint, IC-97-00440 (Nov. 26, 1996).

<sup>5</sup> See *Ameritech Corporation v. MCI Telecommunications Corporation*, File No. E-97-17 (filed Apr. 9, 1997).

<sup>6</sup> On June 29, 1998, the parties file a joint motion advising the Commission that they had reached a mutually satisfactory settlement, and requested that Ameritech's complaint alleging illegal joint marketing by MCI be dismissed with prejudice (Joint Motion to Dismiss). On July 1, 1998, the Enforcement Division of the Commission's Common Carrier Bureau granted the parties Joint Motion to Dismiss, dismissing the complaint with prejudice and terminating the proceeding. See *Ameritech Corporation, Complainant, v. MCI Telecommunications Corporation, Defendants*, File No. E-97-17, Order, DA 98-1333 (rel. July 1, 1998).

4. In this Order, we grant MCI's request to withdraw its May 1997 petition for declaratory ruling. Accordingly, IT IS ORDERED that MCI's motion to withdraw its May 1997 petition for declaratory ruling regarding the joint marketing restriction in section 271(e)(1), IS GRANTED without prejudice to future refiling.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey  
Chief, Program Policy and Planning Division  
Common Carrier Bureau